

Rulemaking Hearing Rules  
of the  
State Board of Education  
Chapter 0520-1-10  
Tennessee's Early Intervention System  
New Rules

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0520-1-10-.01      DEFINITIONS.

For the purpose of Tennessee's Early Intervention System (TEIS), the terms used in this part, unless specifically indicated by the context, shall be consistent with the definition specified in 0520-1-10-.01 of these Rules and defined as follows:

- (1) "Advocacy" means influencing systems and decision-makers on behalf of individual children and families and participating in efforts to strengthen and improve services for all children.
- (2) "Annual IFSP Meeting" means a meeting that shall be conducted at least annually to evaluate the Individualized Family Service Plan (IFSP) for a child and the child's family and to revise its provisions as appropriate.
- (3) "Appropriate Professional Requirements" means entry level requirements that are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services and established suitable qualifications for personnel providing early intervention services pursuant to IDEA Part C to eligible children and their families who are served by State, local, or private agencies.
- (4) "Assessment for IDEA Part C (TEIS)" purposes means the ongoing procedures used by qualified personnel throughout the period of a child's eligibility under IDEA Part C to identify:
  - (a) The child's unique strengths and needs and the services appropriate to meet those needs;
  - (b) The resources, priorities, and concerns of the family related to the development of the child;
  - (c) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability; and
  - (d) The current and potential activities, relationships, routines, and culture that constitute the child's natural environments.

(Rule 0520-1-10-.01, continued)

- (5) “Appropriately Trained and Supervised”, as it applies to paraprofessional staff, means that the training, experience, and supervision of paraprofessional staff is consistent with the professional standards established by State requirements for their profession and TEIS criteria for the provision of early intervention services.
- (6) “Child or Children Eligible for Early Intervention Services” means infants and toddlers, birth to age three, with developmental delays who meet the requirements for eligibility as determined by the State Department of Education and in accordance with federal statute.
- (7) “Central Directory” means a system-wide directory of information about public and private early intervention services, resources, and experts available in the State; research and demonstration projects being conducted in the State; and professional and other groups that provide assistance to children eligible under IDEA Part C and their families.
- (8) “Comprehensive Child Find System” means the total system that is consistent with IDEA and TEIS Policies and Procedures. It is coordinated with all other major efforts conducted by all State Agencies responsible for administering the various education, health, and social service programs relevant to IDEA Part C to locate, evaluate, and identify children with disabilities. This includes children in traditionally underserved populations including, minority, low income, children living in rural communities, and children living in urban communities and highly mobile children (e.g., migrant and homeless children) residing in Tennessee, and who are in need of early intervention services. Child Find includes the process developed and implemented to determine which children are receiving needed early intervention services.
- (9) “Consent” means;
  - (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
  - (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom or what agency;
  - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Revocation of consent must be in writing; and
  - (d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate any action that has occurred after the consent was given and before the consent was revoked). Revocation is not effective until received by the Incoming or Designated Service Coordinator to which the consent was granted.
- (10) “Day”, unless otherwise specified, means calendar day.
- (11) “Department” means the Tennessee Department of Education.
- (12) “Dispute resolution” means the procedures, as specified in the State’s Interagency Agreement, which will be carried out to ensure timely resolution of intra-agency and interagency disputes.
- (13) “Early Intervention Program Settings” are defined as follows:
  - (a) “Program designed for children with developmental delays or disabilities” means an organized early intervention center/classroom or developmental child care program of at least one hour in duration provided on a regular basis. The program is usually directed toward the facilitation of several developmental areas.

(Rule 0520-1-10-.01, continued)

- (b) “Program designed for children who are typically developing” means services are provided in a regular nursery school/child care center or facility regularly attended by a group of children. Most of the children in these settings do not have disabilities.
  - (c) “Home” means services are provided in the principal residence of the child’s family or care givers.
  - (d) “Hospital” means services are provided in a residential medical facility and the child is receiving early intervention services on an inpatient basis.
  - (e) “Service provider location” means services are provided at an office, clinic, or hospital where the infant or toddler comes for short periods of time (e.g., 45 minutes) to receive services. The service may be provided individually or to a small group of children.
  - (f) “Other” means any service setting not described by the settings or program listed above.
- (14) “Early Intervention Record” means any personally identifiable information directly related to a IDEA Part C eligible child and the child’s family that pertains to evaluation and assessment, the development of an IFSP, and/or the delivery of early intervention services.
- (15) “Early Intervention Services (EIS)” means services that are:
- (a) Designed to meet the developmental needs of each child eligible under IDEA Part C and the needs of the family related to enhancing the child’s development;
  - (b) Selected in collaboration with the parents;
  - (c) Provided under public supervision by qualified personnel in conformity with an individualized family service plan;
  - (d) Provided at no cost to families unless federal or state law provides for a schedule of sliding fees; and
  - (e) Meet the standards of the State and IDEA Part C.
- (16) “Early Intervention System (TEIS)” refers to the Tennessee Early Intervention System (TEIS) and means the total effort in Tennessee that is directed at meeting the needs of infants and toddlers eligible under IDEA Part C and their families.
- (17) “Evaluation for IDEA Part C (TEIS) purposes” means the procedures used by appropriate qualified personnel to determine a child’s initial and continuing eligibility, consistent with the definition of “infants and toddlers with disabilities” including determining the status of the child in each of the following developmental areas: (1) cognitive development; (2) physical development, including vision and hearing; (3) communication development; (4) social or emotional development; and (5) adaptive skills.
- (18) “Family Assessment” means an assessment that is family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the child.
- (19) “Family Educational Rights and Privacy Act (FERPA)” means the collective name for federal legislation (20 USC § 1232g) prohibiting educational agencies or institutions from releasing education records of students unless consistent with terms of the Act.

(Rule 0520-1-10-.01, continued)

- (20) “Highest Requirement in the State” means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline.
- (21) “Impartial” means that the person appointed to implement the complaint resolution process:
  - (a) Is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and
  - (b) Does not have a personal or professional interest that would conflict with the person’s objectivity in implementing the complaint resolution process.
- (22) “Incoming Service Coordinator” means the individual designated to assist the child and family from the time of the initial referral into the early intervention system through the initial IFSP process including the multidisciplinary evaluation and assessment and the development of the IFSP document.
- (23) “Individualized Family Service Plan (IFSP)” means a written plan, developed in accordance with IDEA Part C, for providing early intervention and other services to an eligible child and the child’s family.
- (24) “Individuals with Disabilities Education Act (IDEA)” means the collective name for federal legislation codified at 20 USC §1400 et seq. as amended, providing federal funds for early intervention services and special education and related services to children with disabilities in accordance with standards set by the Act.
- (25) “Infant or Toddler with a Disability” means an individual birth to age three who qualifies for early intervention services under IDEA Part C and State Department of Education criteria because the child:
  - (a) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development; physical development, including vision and hearing; communicative development; social or emotional development; adaptive development; or
  - (b) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or
  - (c) Exhibits developmental delays for which there are no standardized measures or for which existing standardized procedures are not appropriate for the child’s age or a given developmental area.
- (26) “Informed Clinical Opinion” means:
  - (a) As a component of the multidisciplinary evaluation, informed clinical opinion means that the professional(s) have used qualitative and quantitative information to assess the child’s development; or
  - (b) A set of procedures for determining eligibility when the use of standardized instruments or measures will not accurately reflect the child’s developmental status.
- (27) “Informed Consent” means the parent has been fully informed of all information relevant to the activity for which the consent is sought in the parent’s native language or mode of communication; understands and agrees in writing to the carrying out of the activity for which the consent is sought and the consent describes the activity and lists the records (if any) that will be

(Rule 0520-1-10-.01, continued)

released and to whom; and understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

- (28) "Intra-agency dispute" means the inability of divisions, offices, bureaus, units or programs within a department or agency to agree as to which is responsible for coordinating services; providing appropriate services; paying for appropriate services; or any other matter related to the department's or agency's statutory responsibilities.
- (29) "Interagency dispute" means any disagreement between two or more agencies concerning the responsibility for coordination of services, provision of appropriate services, payment for appropriate services or any other matter related to the early intervention system in Tennessee.
- (30) "Interagency Coordinating Council (ICC)" means the Tennessee Interagency Coordinating Council under IDEA Part C.
- (31) "Interim Individualized Family Service Plan (Interim IFSP)" means a temporary IFSP that is developed in accordance with IDEA Part C and TEIS Policies and Procedures to address an immediate need for services by an eligible infant or toddler when exceptional circumstances related to the child make it impossible to complete the evaluation within 45 days. The Interim IFSP ensures that the requirement for a timely evaluation and assessment are not circumvented.
- (32) "Lead Agency" means the Department, designated by the Governor to administer the early intervention system in accordance with the requirements of IDEA Part C.
- (33) "Lead Agency Designee" means the coordinator of the local TEIS district office, unless otherwise specified.
- (34) "Local Interagency Coordinating Council (LICC)" means a group of individuals in each of the nine (9) geographic districts of Tennessee's Early Intervention System (TEIS) who meet on a periodic basis in accordance with these regulations and includes parents of children under the age of six (6) who have received, or are currently receiving, services through TEIS, professionals and other interested individuals to promote district-wide networking, problem solving and recommendations regarding service provision priorities and needs at the district and local level.
- (35) "Multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and development of the IFSP.
- (36) "Native Language" means:
  - (a) The language normally used by the individual, or, in case of a child, the language normally used by the parents of the child;
  - (b) In all direct contact with a child (including evaluation), the language normally used by the child in the home or learning environment; and
  - (c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
- (37) "Natural Environment" means settings that are natural or normal for the child and family, including home and community settings in which children without disabilities participate and that are considered natural or normal for the child's age peers who have no disability.

(Rule 0520-1-10-.01, continued)

- (38) “Paraprofessional” means an individual with at least a high school diploma or recognized equivalent that is employed in the provision of early intervention services under the supervision of a professional with appropriate credentials for their profession (licensed or certified according to Tennessee requirements) 20 USC § 1111g(3). A paraprofessional shall meet the professional and employment standards set by the State Board of Education pursuant to TCA § 49-10-110(g)(2) [Traineeships and Fellowships] and this rule.
- (39) “Parent” means:
- (a) A natural or adoptive parent of a child;
  - (b) A guardian, but not the State if the child is a ward of the State;
  - (c) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
  - (d) A surrogate parent who has been appointed in accordance with 34 CFR § 303.406; or
  - (e) A foster parent may act as a parent if:
    - 1. The natural parent’s authority to make decisions on the child's behalf has been extinguished under Tennessee law; and
    - 2. The foster parent:
      - (i) Has an ongoing, long-term parental relationship with the child of more than one (1) year in duration;
      - (ii) Is willing to make the decisions required of parents under the IDEA; and
      - (iii) Has no interest that would conflict with the interests of the child.
- (40) “Payor of Last Resort” means that funds provided under IDEA Part C may not be used to satisfy a financial commitment for a service for an eligible infant /toddler and/or their family that would have been paid for by any other public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of IDEA Part C. Funds under IDEA Part C shall only be used to provide an early intervention service to a child who is eligible under this part when the child and family is neither entitled, nor has access, to that service under any other federal, state, local, or private source.
- (41) “Periodic Review” means a review of the IFSP for a child and the child’s family to be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine the degree to which progress towards achieving the outcome is being made and whether modification or revision of the outcomes or services is necessary.
- (42) “Personally Identifiable Information” means the information that includes:
- (a) The name of the child, the child’s parent(s), or other family member(s);
  - (b) The address of the child;
  - (c) A personal identifier, such as the child’s or parent’s social security number; or

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- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- (43) “Preschool age” means the age range of three (3) through five (5) years.
- (44) “Primary Referral Source” means hospitals (including prenatal and postnatal care facilities), physicians, parents, child care programs, local educational agencies, public health facilities, other social services agencies, other health care providers.
- (45) “Procedural Safeguards” means the processes established by federal and state regulations to ensure that the mandates of IDEA are properly carried out by the early intervention system.
- (46) “Profession or Discipline” means a specific occupational category that:
  - (a) Provides early intervention services to children and their families under IDEA Part C;
  - (b) Has been established or designated by the State; and
  - (c) Has a required scope of responsibility and degree of supervision.
- (47) “Public Awareness Program” means the program that focuses on the early identification of children who are eligible to receive early intervention services and includes the preparation and dissemination of materials by the lead agency to all primary referral sources and parents on the availability of early intervention services. The program must inform the public about the early intervention system, the Child Find system, and the central directory.
- (48) “Qualified Personnel” means an individual who has met the State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.
- (49) “Referral” means the process that guides families toward and assists them in obtaining available resources and/or information regarding the early intervention system.
- (50) “Service Coordination” means the activities carried out by a service coordinator, in accordance with IDEA Part C and these Regulations to assist and enable a child eligible under IDEA Part C and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State’s early intervention system.
- (51) “Service Coordinator” means the individual appointed by a public agency or selected by the IFSP team and designated in the IFSP to carry out service coordination activities.
- (52) “Service Provider” means a public or private agency, or qualified person designated to provide early intervention services for an eligible child and the child’s family, in accordance with an approved IFSP.
- (53) “Single Point of Entry” means the State’s toll free number that links families and other referral sources to the network of local points of entry (TEIS) offices.
- (54) “State Approved or Recognized Certification, Licensing, Registration, or other Comparable Requirements” means the requirements that the State Legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry level standards for employment in a specific profession or discipline in the State.

(Rule 0520-1-10-.01, continued)

- (55) “Surrogate Parent”, for TEIS purposes, means an individual who has been assigned by the lead agency to act as a surrogate for the parent in order to ensure that the rights of a child eligible under IDEA Part C are protected.
- (56) “Tennessee's Early Intervention System (TEIS)” means the name for the entity established by the Department (lead agency) to be responsible for the planning, implementation, supervision, monitoring, and technical assistance for the state-wide early intervention system for infants and toddlers with disabilities in accordance with IDEA Part C.
- (57) “Transition” means the steps to be taken, in accordance with federal and state regulations for IDEA, to support the child’s purposeful and organized move from:
  - (a) One program to another;
  - (b) The early intervention system to a preschool program; or
  - (c) School to post school activities.

0520-1-10-.02           PROGRAMS AND SERVICE COMPONENTS.

(1)     Public Awareness Program.

(a)     General.

- 1.       The Department will maintain a broad, ongoing public awareness program using a variety of methods to inform the general public about the importance of early identification of infants and toddlers with disabilities and the availability of early intervention services. The target audience shall include, but is not limited to, individuals with disabilities, public agencies at the state and local level, private providers, professional associations, parent groups, advocacy associations.

(b)     Procedures for implementing the public awareness program.

- 1.       The lead agency will develop, prepare, and disseminate information and materials to all primary referral sources for informing parents of the availability of early intervention services.
- 2.       Methods for informing the public and locating children and families will include:
  - (i)       Maintaining a central directory that is updated on an annual basis;
  - (ii)      Maintaining a toll free access line that will link families and other concerned individuals to the local district offices of TEIS;
  - (iii)     Participating in the development and implementation of a plan for effective outreach, which may include public service announcements, newspaper articles, posters, and other community information processes and reporting the results of these efforts to the ICC on an annual basis;
  - (iv)      Maintaining a system for supplying and distributing public awareness materials, especially through the local TEIS offices; and

(Rule 0520-1-10-.02, continued)

- (v) Maintaining a web site which provides pertinent information regarding the early intervention system.
  - (c) The public awareness program shall inform the public about:
    - 1. The State's early intervention system;
    - 2. The Child Find system including:
      - (i) The purpose and scope of the system;
      - (ii) How to make referrals to the early intervention system;
      - (iii) How to gain access to a comprehensive, multidisciplinary evaluation, and other early intervention services; and
    - 3. The central directory.
- (2) Central Directory.
  - (a) General.

The Department shall develop and maintain a central directory of information which:

    - 1. Identifies services, resources, experts, professionals and other groups that provide assistance to eligible children and their families;
    - 2. Is developed in concert with families and community groups, including local interagency coordinating councils (LICCs);
    - 3. Is readily accessible to the general public; and
    - 4. Updated at least annually.
  - (b) The information in the central directory shall be in sufficient detail to:
    - 1. Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and
    - 2. Enable the parent of an eligible infant or toddler to contact by telephone or letter any of the sources listed in the directory.
- (3) Child Find.
  - (a) General.

The Department, with the advice and assistance of the State Interagency Coordinating Council, shall maintain a comprehensive Child Find system. This system shall be coordinated with all other major efforts conducted by State agencies responsible for administering the various education, health, and social service programs relevant to IDEA Part C to locate, identify, and evaluate children with developmental delay, including but not limited to the:

    - 1. Assistance to the State Program authorized under IDEA Part B;

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2. Maternal and Child Health Program under Title V of the Social Security Act;
3. TennCare's Early Periodic Screening, Diagnosis and Treatment (EPSDT) under Title XIX of the Social Security Act;
4. Developmental Disabilities Assistance and Bill of Rights Act;
5. Head Start; and
6. Supplemental Security Income Program under Title XVI of the Social Security Act.

(4) Referral.

(a) General.

The primary referral source shall refer the infant or toddler to TEIS within two (2) working days if he/she:

1. Suspects that an infant or toddler is experiencing developmental delays; or
2. Has identified or diagnosed a condition in the infant or toddler which is known to have a high probability of resulting in developmental delay.

(b) The primary referral source shall refer the identified child to TEIS for a multidisciplinary evaluation to determine eligibility for service under IDEA Part C by:

1. Contacting the State's single point of entry via the TEIS 1-800 number;
2. Contacting the local TEIS point of entry directly; or
3. Contacting the Office of Early Childhood in the Division of Special Education of the Department.

(c) Upon receipt of the referral, the local point of entry (TEIS district office) shall:

1. Appoint a service coordinator as soon as possible;
2. Ensure that the initial attempt by the service coordinator to contact the family of the infant/toddler be made by phone or in person within five (5) working days after receipt of the referral into the early intervention system. If attempts to contact the family by phone or in person have been unsuccessful within five (5) working days, a letter shall be sent to the family on the fifth day;
3. Ensure that attempts to contact the family are documented.

(5) Initial Contacts with Families.

(a) During the initial meeting with the family, the incoming service coordinator shall:

1. Explain the scope of early intervention services and potential benefits that are available to eligible children and their families under IDEA Part C;
2. Discuss the family's procedural safeguards under IDEA Part C and provide a copy to the family for their records;

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3. Request parental consent, in writing, for the completion of multidisciplinary evaluation(s) and/or assessments; and
  4. Coordinate the multidisciplinary evaluation and assessment activities prior to the initial IFSP meeting.
- (b) If the parents or legal guardian refuses the referral to TEIS for the appointment of an incoming service coordinator, the public agency who has received the initial referral shall:
1. Obtain, in writing, the parent's refusal of the referral to TEIS; and
  2. Document that the parents or legal guardian have been informed of their rights under IDEA Part C.
- (c) If a family declines consent for referral to TEIS, but elects to pursue any early intervention service which must be supported through the lead agency, the agency or provider assisting that family shall:
1. Assume full responsibility to ensure that all of the provisions and components included in the rights of the child and family under IDEA Part C are provided, including:
    - (i) The assignment of a qualified service coordinator to assist and enable the child and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention system;
    - (ii) The completion of a multidisciplinary evaluation to determine eligibility; and
    - (iii) The development and implementation of the IFSP.
    - (iv) If the infant/toddler is determined to be ineligible for services under IDEA Part C, TEIS shall make a referral to other appropriate agencies or programs, with parental consent.
- (6) Service Coordination.
- (a) General.
- Service coordination means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under Tennessee's Early Intervention System (TEIS).
1. Each eligible child and the child's family must be provided with one service coordinator who is responsible for:
    - (i) Coordinating all services across agency lines; and
    - (ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.
- (b) Service coordination is an active, ongoing process that involves:

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1. Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;
  2. Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic evaluation purposes) that the child needs or is being provided;
  3. Facilitating the timely delivery of available services; and
  4. Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.
- (c) Specific service coordination activities include:
1. Coordinating the performance of evaluations and assessments;
  2. Facilitating and participating in the development, review, and evaluation of individualized family service plans;
  3. Assisting families in identifying the available service providers;
  4. Coordinating and monitoring the delivery of available services including maintaining a complete and current record of pertinent information regarding the child's early intervention service delivery;
  5. Informing families of the availability of advocacy services;
  6. Coordinating with medical and health providers; and
  7. Facilitating the development of a transition plan to preschool services, if appropriate.
- (d) Assignment of service coordinators.
1. TEIS will provide incoming service coordination services to the child and family unless otherwise specified by the family.
  2. If incoming service coordination services are provided by an agency other than TEIS, that agency will follow all procedural safeguards required by the State's early intervention system and IDEA Part C.
  3. The designated service coordinator will be assigned at the IFSP meeting by the IFSP participants, including the family. The participants may:
    - (i) Assign the same service coordinator who was appointed at the time the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or
    - (ii) Appoint a new service coordinator.
- (e) Qualifications of service coordinators.
1. Service coordinators must be persons who have demonstrated knowledge and understanding about:

(Rule 0520-1-10-.02, continued)

- (i) Infants and toddlers who are eligible under IDEA Part C;
- (ii) IDEA Part C and the regulations in this Rule; and
- (iii) The nature and scope of services available under Tennessee's Early Intervention System, the system of payments for services in Tennessee, and other pertinent information.

(7) Definition of Developmental Delay for Infants and Toddlers.

(a) General.

Infants and toddlers with disabilities eligible for Tennessee's Early Intervention System shall be those children from birth to age three, inclusive, who:

- 1. Have been evaluated in accordance with appropriate procedures for early intervention services, and
- 2. As result of the evaluation, a multidisciplinary team has determined that the child meets the criteria for Tennessee's definition of Developmental Delay.

(b) Developmental Delay Criteria. The infant or toddler must meet one of the following:

- 1. The child is experiencing developmental delays, as measured by appropriate diagnostic instruments, administered by qualified professionals, indicating that the child is:
  - (i) Functioning at least 25% below his/her chronological age in two or more of the following developmental areas:
    - (I) Cognitive development;
    - (II) Physical development, including vision and hearing;
    - (III) Communication development;
    - (IV) Social/emotional development; and/or
    - (V) Adaptive development; or
  - (ii) Functioning at least 40% below his/her chronological age in one of the developmental areas listed in subparagraph 1.(i)(I) above; or
  - (iii) The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, i.e., known, obvious, or diagnosable condition such as sensory losses and severe physical impairments. Examples include, but are not limited to:
    - (I) Hearing loss that can be verified or estimated to be significant as indicated through an audiological evaluation;
    - (II) Visual loss, which can be verified or estimated to be significant, for example, cataracts, glaucoma, strabismus, albinism, myopia, retinopathy of prematurity, or dysfunction of the visual cortex;

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- (III) Neurological, muscular, or orthopedic impairment which prevents the development of other skills, for example, congenital dislocation of the hip, spina bifida, cerebral palsy, rheumatoid arthritis, autism, epilepsy;
    - (IV) Organic conditions or syndromes which have known significant consequences; for example, tuberous sclerosis, hydrocephalus, muscular dystrophy, fetal alcohol syndrome;
    - (V) Chromosomal, metabolic, or endocrine abnormalities, for example, Down Syndrome, Klinefelter Syndrome, Turner Syndrome, hypothyroidism; or
    - (VI) Prematurity, as defined by Tennessee's eligibility criteria for premature infants; or
  - (iv) The child has been determined eligible based on informed clinical opinion because the use of standardized instruments does not accurately reflect the child's developmental status and the child does not have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.
- (8) Eligibility Procedures.
  - (a) General.
 

A multidisciplinary team, which includes the parent/caregiver of the infant or toddler, shall:

    1. Determine whether the infant or toddler has a disabling condition based on a review of the appropriate evaluation(s); and
    2. Document the child's eligibility.
  - (b) A child who is determined not to be eligible for early intervention services shall be referred to community programs with parent consent, as appropriate.
  - (c) Infants and toddlers who are not eligible under IDEA Part C may be at risk of having substantial developmental delays because of well known biological and environmental factors that place infants and toddlers "at risk" for developmental delay. Infants and toddlers who are considered to be "at risk" for but are not experiencing developmental delays consistent with the criteria for Tennessee's definition of Developmental Delay are not eligible for early intervention services under IDEA Part C through Tennessee's Early Intervention System.
- (9) Evaluation and Assessments.
  - (a) General.
 

The Lead Agency recognizes the central role of the family, respects the expertise of parents, and supports a balanced partnership between parents and professional members in the evaluation and assessment process. Therefore, prior to the evaluation or assessment, parents must be fully informed about the purpose, content, and process and be full participants in determining the following:

(Rule 0520-1-10-.02, continued)

1. The extent of the role that they (the family) will play in the process;
2. The disciplines or persons to be involved in conducting evaluations and assessments;
3. The measures to be used;
4. When and how the information obtained will be synthesized and shared; and
5. Who will have access to the information obtained.

(b) Evaluation.

1. A multidisciplinary evaluation shall be conducted in order to determine a child's initial and continuing eligibility consistent with Tennessee's definition of "infants and toddlers with disabilities," including determining the status of the child in each of the developmental domains. Eligibility under IDEA Part C must be determined before a child can receive early intervention services.
2. The eligibility evaluation must be multidisciplinary and shall:
  - (i) Be conducted and interpreted by qualified personnel trained to utilize appropriate methods and procedures in the evaluation of infants and toddlers in accordance with the specifications of Policies and Procedures for TEIS, as well as clinical judgment;
  - (ii) Include the following:
    - (I) A review of pertinent records related to the child's current health status and medical history;
    - (II) An evaluation of the child's level of functioning in each of the following developmental areas:
      - I. Cognitive development;
      - II. Physical development, including vision and hearing;
      - III. Communication development;
      - IV. Social or emotional development; and
      - V. Adaptive development; and
    - (III) A determination of the unique needs of the child in terms of each developmental area, including the identification of types of services appropriate to meet those needs;
  - (iii) Include a minimum of two (2) disciplines, which are selected based on the individual needs of the child;
  - (iv) No single procedure shall be used as the sole criterion for determining a child's eligibility for early intervention services under IDEA Part C.

(Rule 0520-1-10-.02, continued)

- (v) At least one of the professionals involved in conducting the evaluation shall be from the discipline of early childhood development and must:
  - (I) Meets the Tennessee Professional Standards for Early Childhood Education and/or Early Childhood Special Education; or
  - (II) Have verification of formal training and experience in the field of early childhood development and/or early intervention; and
  - (III) Have experience in conducting developmental evaluations of young children.
- (vi) Other professionals involved in conducting the evaluation for eligibility may include one or more of the following:
  - (I) Audiologist;
  - (II) Child development specialist;
  - (III) Child psychologist;
  - (IV) Child life specialist;
  - (V) Counselor;
  - (VI) Developmental pediatrician;
  - (VII) Family therapist;
  - (VIII) Neurologist;
  - (IX) Occupational therapist;
  - (X) Ophthalmologist;
  - (XI) Pediatric nurse/nurse practitioner;
  - (XII) Pediatric resident;
  - (XIII) Pediatrician;
  - (XIV) Physical therapist;
  - (XV) Physician: family practice/specialty/resident;
  - (XVI) Psychologist;
  - (XVII) Social worker; and
  - (XVIII) Speech and language pathologist.
- (vii) Other components that shall be incorporated, as appropriate, in the multidisciplinary evaluation include:

(Rule 0520-1-10-.02, continued)

- (I) Informed clinical opinion, as defined in this rule;
  - (II) Family/caregiver involvement to the extent preferred by the family/caregiver;
  - (III) The family's culture and language, to the greatest extent possible (if English is not the family's native language, interpreters shall be provided, when necessary, to ensure the family's ability to fully participate as a team member); and
  - (IV) To the greatest extent appropriate, the evaluation must be conducted in the setting(s) that has been determined to be natural for the child and family.
- (c) Coordination responsibilities regarding evaluations.
  - 1. The incoming service coordinator responsible for oversight of the evaluation to determine eligibility shall ensure, at a minimum that:
    - (i) As appropriate, test and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
    - (ii) Any evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;
    - (iii) No single procedure is used as the sole criterion for determining a child's eligibility;
    - (iv) Evaluation procedures are conducted by qualified personnel, meaning that the individual has met State approved or recognized certification, licensing, registration or other comparable requirements that apply to the area in which the person is providing early intervention services;
    - (v) Parent/legal guardian has given consent, in writing, prior to conducting the initial evaluation;
    - (vi) The parent is fully informed of all information regarding the multidisciplinary evaluation process and that reasonable efforts have been made to:
      - (I) Ensure that the parent/caregiver is fully aware of the nature of the evaluation that would be available; and
      - (II) Understands that the child will not be able to receive the evaluation unless consent is given.
- (d) Pertinent Timelines.
  - 1. The initial evaluation to determine eligibility and the development of the initial IFSP shall be completed within 45 days of the date of the child's initial referral into the early intervention system.

(Rule 0520-1-10-.02, continued)

2. In the event of exceptional child or family circumstances that make it impossible to complete the initial evaluation within 45 days (e.g., the child has an extended illness requiring hospitalization), the incoming service coordinator shall:
  - (i) Document those circumstances; and
  - (ii) Develop and implement an interim IFSP to the extent appropriate.
  - (iii) The child's period of eligibility for services begins when documentation of the child's eligibility is completed by the incoming service coordinator and the multidisciplinary team.
3. Re-evaluations.
  - (i) Re-evaluation to determine a child's continuing eligibility shall be completed when any participant of the child's Individualized Family Service Plan (IFSP) team suspects that the child may no longer meet the eligibility requirements for the State's Early Intervention System. The need for re-evaluation shall be considered when:
    - (I) Substantial progress in development is indicated by on-going assessments; or
    - (II) Changes in the child's diagnosed physical or mental condition are such that the child's current condition or status is no longer considered to have a high probability of resulting in developmental delay.
  - (ii) Re-evaluation procedures and criteria for determining continuing eligibility are consistent with those specified for evaluations to determine initial eligibility.
- (e) Family Assessments.
  1. Family assessments must be family-directed and designed to determine:
    - (i) The resources, priorities, and concerns of the family; and
    - (ii) The identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.
  2. Any family assessment that is conducted must be voluntary on the part of the family, and eligibility for early intervention services shall not be denied a child and family when the parent/guardian declines to participate in family assessment activities.
  3. If an assessment of the family is carried out, the assessment must:
    - (i) Be conducted by personnel trained to utilize appropriate methods and procedures;
    - (ii) Be based on information provided by the family through a personal interview;

(Rule 0520-1-10-.02, continued)

- (iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development; and
    - (iv) Include a discussion of confidentiality regarding the information to be shared at the IFSP meeting.
  - 4. The initial family assessment must be completed within forty-five (45) days of referral into the early intervention system prior to the initial IFSP meeting.
- (f) Child Assessment.
  - 1. Ongoing assessment activities are conducted throughout the child's period of eligibility to monitor the child's present levels of development and to identify the child's unique strengths and needs and the services and activities required to emphasize strengths and to meet identified needs. The assessment for each child must:
    - (i) Be conducted and interpreted by qualified personnel trained to utilize appropriate methods and procedures and include the following:
      - (I) A review of pertinent records related to the child's current health status and medical history;
      - (II) A review of current information regarding of the child's present level of functioning in each of the developmental areas identified in the State's definition of Developmental Delay;
      - (III) An assessment of the unique strengths and needs of the child in terms of each developmental area, including the identification of services appropriate to meet those needs, and
      - (IV) Synthesis and utilization of information from a variety of assessment methods to determine services needed for the child and family;
    - (ii) Be based on informed clinical opinion;
    - (iii) Include parent involvement, to the extent indicated by the parent(s), and the service coordinator, early interventionist, and other professionals involved in the child's intervention program;
    - (iv) Incorporate the family's culture and language needs to the greatest extent possible; and
    - (v) Include the availability of interpreters, when needed, to ensure full family participation, for families who have limited English proficiency and for families using other forms of communication, for example, sign language.
  - 2. To the greatest extent appropriate, the assessment must be conducted in the setting(s) that has been determined to be natural for the child and family.
  - 3. Assessments shall be completed at no less than six (6) month intervals and the information shall be compiled in a timely manner prior to each scheduled six

(Rule 0520-1-10-.02, continued)

months review and annual IFSP to ensure that current information is available for consideration by the IFSP team.

(i) Coordination responsibilities regarding assessments.

(I) The service coordinator and other persons responsible for assessments activities shall ensure, at a minimum, that:

- I. Assessment materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
- II. Any assessment procedures and material that are used are selected and administered so as not to be racially or culturally discriminatory;
- III. The person conducting assessments has met state approved or recognized requirements that apply to the area in which the person is providing early intervention assessment services; and
- IV. The parent/guardian is fully informed regarding the assessment process and has consented in writing to the proposed action.

(10) Individualized Family Service Plan (IFSP).

(a) General.

An Individualized Family Service Plan (IFSP) shall be developed and implemented for each infant or toddler birth to age three who is determined eligible for services under IDEA Part C and Tennessee's Early Intervention System. The IFSP shall:

1. Be developed in partnership with the family;
2. Identify the natural supports of the family and incorporate those natural supports into the specific strategies contained in the IFSP;
3. Incorporate and be based on information gained through evaluation and assessments;
4. Be developed in accordance with state and federal regulations; and
5. Be consistent with all specifications outlined in this Rule.

(b) Family involvement in IFSP development and implementation.

1. The family of the eligible child shall participate in all phases of the IFSP process and documentation to the degree they determine appropriate.
2. The degree to which the family's needs will be addressed in the IFSP is determined in a collaborative manner with the full participation of the parent/caregiver of the child.

(Rule 0520-1-10-.02, continued)

3. Parents shall retain the ultimate decision in determining whether they, their child, or family members will participate in early intervention services recommended by the IFSP team. The family's decision to decline any service, or services, shall not impede their ability to participate in any other recommended service(s).

(c) IFSP meetings.

1. The individuals who have been identified to serve as members of the IFSP team for a IDEA Part C eligible infant or toddler shall participate in a meeting to develop the initial Individualized Family Service Plan (IFSP) within forty-five (45) days after the child's referral into the State's early intervention system.
2. IFSP meetings shall be conducted:
  - (i) In settings and at times that are convenient to families; and
  - (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.
3. Each initial and annual meeting to develop or evaluate the IFSP shall include representatives of at least two disciplines related to the individual needs of the child and family. The IFSP team must include, at a minimum, the following participants:
  - (i) The parent(s)/caregivers of the infant or toddler;
  - (ii) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for the implementation of the IFSP; and
  - (iii) Person or person(s) directly involved in conducting the evaluation and assessments. If the evaluator is unable to attend the meeting, arrangements must be made for the person's involvement through other means, including:
    - (I) Participating in a conference call;
    - (II) Having a knowledgeable authorized representative attend the meeting; or
    - (III) Making pertinent records available at the meeting.
  - (iv) Other individuals, as indicated by specific issues or family preference, may attend the meeting and include, but are not limited to:
    - (I) Other family members as requested by the parent, if it is feasible to do so;
    - (II) A TEIS representative (may be the same as the incoming service coordinator);
    - (III) An advocate or person outside the family, if the parent requests that the person participate; and

(Rule 0520-1-10-.02, continued)

- (IV) As appropriate, persons who may be providing services to the child or family.
- 4. The designated service coordinator shall communicate with the family and other IFSP team members in making arrangements for the IFSP meeting. Once established, written notice of the meeting shall be provided to the family and other participants, no later than ten (10) days prior to the scheduled meeting date to ensure that they will be able to participate.
- 5. Participants' involvement in the IFSP meeting shall be reflected on the IFSP document by personal signature or by noting the method of participation.
- (d) Content of the Individualized Family Service Plan.
  - 1. Each individualized Family Service Plan shall include the following information:
    - (i) A statement (based on professionally acceptable objective criteria) of the child's present levels of development in each of the following areas:
      - (I) Physical development (including vision, hearing, and health status);
      - (II) Cognitive development;
      - (III) Communication development;
      - (IV) Social or emotional development; and
      - (V) Adaptive development;
    - (ii) With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;
    - (iii) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine:
      - (I) The degree to which progress toward achieving the outcomes is being made; and
      - (II) Whether modifications or revisions of the outcomes or services are necessary;
    - (iv) A statement describing the actions that are needed to achieve the outcomes, including steps and strategies, and identifying the individuals or agencies responsible for ensuring the implementation of those actions;
    - (v) A statement of the specific early intervention services necessary to meet the unique needs of the child and family to achieve the outcomes identified in the IFSP, including:

(Rule 0520-1-10-.02, continued)

- (I) The frequency (the number of days or sessions that a service will be provided);
- (II) The dates for initiation of services (as soon as possible after the IFSP meeting) and the anticipated duration of those services;
- (III) The intensity (the length of time the service will be provided during each session, and whether the service is provided on an individual or group basis);
- (IV) The method (how a service is provided e.g., individual; group; consultation) of delivering the services;
- (V) The location of the service(s) (the actual place or places where a service(s) will be provided as determined in the IFSP or the Interim IFSP);
- (VI) The natural environments in which the early intervention services will be provided or a justification of the extent, if any, to which the services will not be provided in the natural environment;
- (VII) The payment arrangement for the service, if any;
- (VIII) The steps to be taken, beginning at no later than age two (2), in order to support the transition of the infant or toddler from IDEA Part C services to:
  - I. Preschool services under IDEA Part B, in accordance with the procedures identified by State and Federal regulations to the extent that those services are considered appropriate; or
  - II. Other services that may be available, if appropriate;
- (vi) The name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons to ensure the provision of early intervention services. To meet the requirements for service coordinator selection, the public agency may:
  - (I) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or
  - (II) Appoint a new service coordinator.
- (vii) To the extent appropriate, the IFSP shall include:
  - (I) Other needs of the child and family related to enhancing the development of the child, such as medical and health needs, which are considered and addressed, including determining:

(Rule 0520-1-10-.02, continued)

- I. Who will provide each service and when, where, and how it will be provided; and
  - II. The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources (e.g., through private insurance, an existing federal-state funding source, such as TennCare or EPSDT, or some other funding arrangement). This does not apply to routine medical services (e.g., immunizations and “well-baby” care) unless a child needs those services and the services are not otherwise available or being provided.
- (viii) The “other services” are services that may be needed by a family but are not required or covered under IDEA Part C. Their identification in the IFSP does not mean that those services must be provided by the State’s early intervention system.
  - (ix) The contents of the IFSP must be fully explained to the parents and informed written consent shall be obtained from the parents prior to the provision of early intervention services described in the IFSP. If the parents decline consent for any particular early intervention service, or withdraw consent after first providing it initially, that service may not be provided. The early intervention services for which parental consent is given must be provided.
2. Periodic Review of the IFSP.
- (i) A review of the IFSP for a child and the child’s family must be conducted at least every six (6) months or more frequently if conditions warrant, or if the family requests such a review.
  - (ii) The purpose of the periodic review is to determine:
    - (I) The degree to which progress toward achieving the outcomes is being made; and
    - (II) Whether modification or revision of the outcomes or services is necessary.
  - (iii) The review may be carried out by a meeting or by other means acceptable to the parents and other participants.
  - (iv) Each periodic review must provide for the participation of those persons who participated in the most current IFSP and, if conditions warrant, the participation of others who are involved in the child’s early intervention services and/or other persons identified by the parents;
  - (v) The periodic review will include written documentation of the progress toward achieving the outcome.
3. Annual Review of the IFSP.

(Rule 0520-1-10-.02, continued)

- (i) A meeting must be conducted on at least an annual basis or more frequently at the parent's request to review and revise the IFSP for a child and the child's family and, as appropriate, to revise its provisions.
  - (ii) The results of any recent evaluations and other information available from the ongoing assessments of the child and family must be considered in:
    - (I) Evaluating the impact of the IFSP and the degree of the child's progress toward achieving the identified outcomes;
    - (II) Evaluating the effectiveness and continuing appropriateness of the services being provided; and
    - (III) Determining the extent, if any, that modifications or additions are needed.
  - (iii) If the annual IFSP is delayed, the reasons for the delay shall be documented in the IFSP Conference notes.
  - (iv) Beginning no later than age two (2) or immediately, if the child is referred to the system after the age of two (2), the annual reviews of the IFSP shall include continuous review and updating of the transition plan. This shall include, but is not limited to, planning for activities such as:
    - (I) Discussions with, and training of, parents regarding future placements and other matters, related to the child and family's transition;
    - (II) Discussion with parents/guardians regarding IDEA Part B procedures;
    - (III) Developing procedures to prepare the child and changes in service delivery, including steps to help the child adjust to and function in a new setting; and
    - (IV) With parental consent, preparation for the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information and copies of IFSPs that have been developed and implemented.
  - (v) The annual IFSP shall reflect current ongoing assessments that have occurred within the last six (6) months prior to the review.
- (e) Interim IFSP.
  - 1. In the event that exceptional child or family circumstances make it impossible to complete the evaluation and assessment within forty-five (45) days of the child's referral into the early intervention system (e.g., the child is ill), the public agency shall:
    - (i) Document those circumstances; and

(Rule 0520-1-10-.02, continued)

- (ii) Develop and implement an interim IFSP for the child and/or family for a period not to exceed more than ninety (90) days. After ninety (90) days, an initial IFSP is developed.
  - 2. If the exceptional circumstances continue past ninety (90) days, document the circumstances; and
  - 3. Review and modify, if necessary, the interim IFSP.
  - 4. Early intervention services for an eligible child and the child's family may begin before the completion of the evaluation and assessments if the following conditions are met:
    - (i) Parental consent is obtained;
    - (ii) An interim IFSP is developed that includes:
      - (I) The name of the service coordinator who will be responsible for the implementation of the interim IFSP; and
      - (II) Coordination with other agencies and persons; and
      - (III) The early intervention services that have been determined to be needed immediately by the child and the child's family.
    - (iii) The evaluation and assessment are completed within the forty-five (45) day after a child is referred into the early intervention system.
    - (iv) The development of an interim IFSP does not circumvent the requirement that evaluations and assessments be completed within the forty-five (45) days after the child is referred into the early intervention system.
- (11) Early Intervention Services.
  - (a) General.
 

Quality early intervention service provision is the result of a process that is based in the routines that are natural to the lifestyle of the individual family and child. This process results in the development of strategies to enhance learning environments. Therefore, the discussion of natural environments is not only about locations where services are provided, but also about a process, which identifies when and where in a family's normal routines interventions will be most effective.
  - (b) Early intervention services are selected in collaboration with parents, provided under public supervision by qualified personnel in conformity with an IFSP that meets the State standards established under this rule. They are provided at no cost to parents unless the State has an established schedule of sliding fees including policies which specify what services will be provided at no cost and what services are subject to a system of payments. Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents under IDEA Part C. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments including home and community settings in which children without disabilities participate and in environments which are considered natural or normal for the child's age peers who have no disability.

(Rule 0520-1-10-.02, continued)

1. Individuals or agencies designated as responsible parties for implementing the action steps documented in the IFSP shall maintain a system that describes the method(s) utilized to show how progress toward achieving the IFSP outcomes will be determined including:
  - (i) The methods and/or procedures utilized in monitoring the implementation of the action and its impact on the child's or family's progress toward achieving the outcomes;
  - (ii) The frequency with which progress is monitored; and
  - (iii) The person(s) responsible for documenting the child's or family's progress and reporting on that progress to the IFSP team for periodic reviews (at a minimum, the six (6) month review, and the annual IFSP).
- (c) Early intervention services necessary to meet the unique needs of the child and the child's family shall be determined by the IFSP team and documented on the IFSP and may include, but not be limited to:
  1. Assistive technology devices and services including:
    - (i) A device, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of the eligible infant or toddler;
    - (ii) A service that directly assists an eligible child in the selection, acquisition, or use of an assistive technology device;
    - (iii) The evaluation of the needs of an eligible infant or toddler including a functional evaluation of the child's customary environment;
    - (iv) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by eligible infants and toddlers;
    - (v) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
    - (vi) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with the existing early intervention plans and programs;
    - (vii) Training or technical assistance for an infant or toddler with disabilities or, if appropriate, the family of the infant or toddler; and
    - (viii) Training or technical assistance for the professional (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of the eligible infant or toddler.
  2. Audiology which includes:
    - (i) Identification of children with auditory impairments, using at risk criteria and appropriate audiologic screening techniques;

(Rule 0520-1-10-.02, continued)

- (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
  - (iii) Referral for medical and other services necessary for the habitation or rehabilitation of children with auditory impairments;
  - (iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;
  - (v) Provision of services for prevention of hearing loss; and
  - (vi) Determination of the child's need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- 3. Service coordination which includes assistance and services provided by a service coordinator to an eligible child and the child's family that are in addition to the functions and activities included under 0520-1-10-.02(6).
- 4. Family training, counseling, home visits, parent-to-parent interaction, and support groups which include services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an eligible child in understanding the special needs of their child and enhancing the child's development.
- 5. Health services which include services necessary to enable a child to benefit from other early intervention services during the time that the child is receiving other early intervention services. Health services include:
  - (i) Clean intermittent catheterization;
  - (ii) Tracheostomy care;
  - (iii) Tube feeding;
  - (iv) The changing of dressings or osteotomy collection bags;
  - (v) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.
    - (I) Health services do not include services that are:
      - I. Surgical in nature such as cleft palate surgery, surgery for clubfoot, or the shunting of hydrocephalus;
      - II. Purely medical in nature such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose, or devices necessary to control or treat a medical condition; or

(Rule 0520-1-10-.02, continued)

- III. Medical-health services such as immunizations and regular "well-baby" care that are routinely recommended for all children.
- 6. Medical services only for diagnostic or evaluation purposes which include services provided by a licensed physician to determine a child's developmental status and/or diagnosis indicating the need for early intervention services.
- 7. Nursing services which include:
  - (i) The assessment of health status for the purpose of providing nursing care including the identification of patterns of human response to actual or potential health problems;
  - (ii) Provision of nursing care to prevent health problems, restore or improve functioning,
  - (iii) Promotion of optimal health and development; and
  - (iv) Administration of medications, treatments, and regimens prescribed by a licensed physician.
- 8. Nutrition services which include:
  - (i) Conducting individual assessments in:
    - (I) Nutritional history and dietary intake;
    - (II) Anthropometric, biochemical, and clinical variables;
    - (III) Feeding skills and feeding problems; and
    - (IV) Food habits and food preferences;
  - (ii) Developing and monitoring appropriate plans to address the nutritional needs of eligible children based on assessments/evaluations; and
  - (iii) Making referrals to appropriate community resources to carry out nutrition goals.
- 9. Occupational therapy which includes services to address the functional needs of a child related to the performance of adaptive skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:
  - (i) Identification, assessment, and intervention;
  - (ii) Adaptations of the environment and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
  - (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(Rule 0520-1-10-.02, continued)

10. Physical therapy which includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:
  - (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;
  - (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and
  - (iii) Providing services to prevent or alleviate movement dysfunction and related functional problems.
11. Psychological services which include:
  - (i) Administering psychological and developmental tests, and other assessment procedures;
  - (ii) Interpreting assessment results;
  - (iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
  - (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
12. Social work services which include:
  - (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
  - (ii) Preparing an assessment of the child within the family context;
  - (iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;
  - (iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and
  - (v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.
13. Special instruction which includes:

(Rule 0520-1-10-.02, continued)

- (i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas; including cognitive processes and social interaction;
  - (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP;
  - (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
  - (iv) Working with the child to enhance the child's development.
- 14. Speech-language pathology which includes:
  - (i) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
  - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; and
  - (iii) Provision of services for habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.
- 15. Transportation which includes the cost of travel such as mileage, or travel by taxi, common carrier, or other means and related costs (e.g., parking expenses) that are necessary to enable an eligible child and the child's family to receive early intervention services.
- 16. Vision services which include:
  - (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;
  - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
  - (iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.
- (d) Payment for Services. The lead agency shall establish a system of payments for early intervention services. The system of payment shall include:
  - 1. Existing sliding fee scales used by state agencies;
  - 2. Other sliding fee scales in place within the agencies; and

(Rule 0520-1-10-.02, continued)

3. Other third party payments as appropriate.
- (e) Early Intervention services will be provided at no cost to families unless Federal or State law provides for a system of payments by families, including a schedule of sliding fees. Fees may not be charged for services that an infant or toddler is otherwise entitled to receive at no cost to parents. The following functions shall not be subject to fees:
1. Implementing the Child Find requirements in 0520-1-10-.02(3);
  2. Evaluation and assessment in 0520-1-10-.02(9);
  3. Service coordination in 0520-1-10-.02(6); and
  4. Activities required for administration and coordination regarding:
    - (i) The development, review and evaluation of an Individualized Family Service Plan and described in 0520-1-10-.02(10);
    - (ii) Implementation of procedural safeguards in 0520-1-10-.03; and
    - (iii) All other components of the State's early intervention system as provided in these Regulations.
- (f) The inability of parents of an eligible infant or toddler to pay for services may not result in the denial of services to the child or the child's family.
- (g) The lead agency shall:
1. Incorporate policies regarding the system of payments within the state interagency agreements; and
  2. Monitor implementation of policies related to the payment for early intervention services to eligible children and their families.
- (12) Transition.
- (a) General.
- Families shall be included in all aspects of transitional planning and implementation to ensure a smooth transition from early intervention services under IDEA Part C to special education services under IDEA Part B.
- (b) Formal transition planning shall begin, and shall be documented in the IFSP, no later than the child's second (2<sup>nd</sup>) birthday. For infants and toddlers who are located and determined eligible for early intervention services through Tennessee's Early Intervention System after the age of two (2), a written transition plan shall be included in the initial IFSP. The individual in the early intervention system designated as service coordinator on the IFSP shall, with parental consent:
1. Provide written notification or referral to the local education agency (LEA) for that child on or before the child's second (2<sup>nd</sup>) birthday;
  2. Convene a transition planning conference among the TEIS district office, the family and LEA no later than ninety (90) days (and at the discretion of all such parties, up to six (6) months) prior to the child's third (3<sup>rd</sup>) birthday. This

(Rule 0520-1-10-.02, continued)

conference must be conducted individually for each child and family. The purpose of this meeting is to:

- (i) Discuss the possibilities for preschool services that the child may possibly receive if determined eligible for IDEA Part B services;
  - (ii) Review the child's program options for the period from the child's third (3<sup>rd</sup>) birthday through the remainder of the school year; and
  - (iii) Further develop and document the child's transition plan.
- (c) For the child who has been determined eligible for special education services under IDEA Part B and is entitled to a Free Appropriate Public Education (FAPE) on his or her third (3<sup>rd</sup>) birthday, an Individualized Education Plan (IEP) shall have been developed for the child and in effect on the child's third (3<sup>rd</sup>) birthday.
- 1. Eligibility determination for IDEA Part B services and development of the IEP are the responsibility of the IEP Team convened by the LEA.
  - 2. An IFSP, developed in accordance with IDEA Part C and containing all additional required information to meet the requirements under IDEA Part B, may be used if agreed upon by agency and the child's parents.
  - 3. If the child's third (3<sup>rd</sup>) birthday occurs during the summer, the child's IEP team shall determine the date when the implementation of the IEP will begin.
  - 4. The granting of an early intervention waiver through any state or locally funded program does not alter the IDEA Part B eligible child's right to FAPE.
- (d) In the case of the child who may not meet the eligibility criteria under IDEA Part B and is not eligible for preschool services through the LEA, with parental consent, the designated service coordinator shall make reasonable efforts to convene a transition conference among TEIS, the family, and providers of other appropriate services for non-eligible children to discuss other options for the child and family.

#### 0520-1-10-.03 PROCEDURAL SAFEGUARDS.

##### (1) Surrogate Parent.

The Lead Agency shall maintain written policies and procedures for recruitment, training, and appointment of surrogate parents.

- (a) TEIS shall, in accordance with Lead Agency procedures, appoint a surrogate parent to represent the child in all matters relating to the identification, evaluation, eligibility determination, assessment, development of an individualized plan, and the provision of appropriate early intervention services including meetings concerning the Individualized Family Service Plan and any mediation and due process hearings pertaining to the child when it determines that:
  - 1. No parent can be identified; or
  - 2. It is unable to locate a natural parent or legal guardian by calls, visits, and by sending a letter by certified mail (return receipt requested) to the last known address of the natural parent or the guardian and allowing ten days for a response of the intention to appoint a surrogate parent; or

(Rule 0520-1-10-.03, continued)

3. The child is a ward of the State (including a ward of the court or of a state agency); and
- (b) A surrogate parent, when representing the child's early intervention interests, has the same rights as those accorded to parents of eligible children and children suspected of being eligible.
- (c) The surrogate parent shall continue to represent the child until one of the following occurs:
  1. The child is determined by TEIS to be no longer eligible for, or in need of, early intervention services except when termination from such services is being contested;
  2. The parent, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
  3. The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent; or
  4. TEIS determines that the appointed surrogate parent no longer adequately represents the child.
- (d) The criteria for selection of surrogate parents determines that:
  1. TEIS shall ensure that a person recommended as a surrogate parent:
    - (i) Has no interest that conflicts with the interests of the child the surrogate parent represents;
    - (ii) Has knowledge and skills that ensure adequate representation of the child; and
    - (iii) Has completed the Surrogate Parent Training Program.
  2. Foster parent(s), selected by an agency of the State of Tennessee as custodian for a child, who have had an eligible foster child for less than one calendar year, may be appointed by TEIS to serve as surrogate parent(s) for the foster child, provided that the foster parent(s) have no conflict of interest, they meet the non-employee requirement, and TEIS has trained them as a surrogate parent(s).
  3. Foster parent(s), selected by an agency of the State of Tennessee as custodian(s) for a child, who have had an eligible foster child for more than one calendar year, are considered the parent(s) for the foster child.
- (e) The non-employee requirement determines that:
  1. A person assigned, as a surrogate parent may not be an employee of, or otherwise affiliated with, any service provider involved in the provision of early intervention or other services to the child; and
  2. A person who otherwise qualifies to be a surrogate parent is not considered an employee of an agency solely because the person is paid by a public agency to be a surrogate parent.

(Rule 0520-1-10-.03, continued)

- (f) The responsibility of a surrogate parent is:
  - 1. To represent the child throughout the early intervention process of the identification, evaluation, eligibility determination, assessment, development of an individualized plan, and the initial provision of services, review of services, and reevaluation, as appropriate;
  - 2. To be acquainted with the child and his/her needs; and
  - 3. To respect the confidentiality of all records and information.
- (g) If the health or safety of child would be endangered by delaying the provision of early intervention service due to the unavailability of a surrogate, the services may be provided sooner, but without prejudice to any rights that the child and parent(s) may have.

(2) Prior Written Notice.

TEIS and other early intervention service providers shall document that prior written notice is provided to parents of an eligible child or a child suspected of being eligible.

- (a) Prior written notice shall be provided prior to the following occasions:
  - 1. When an early intervention service provider proposes to initiate or change the identification, assessment, or provision of services to the child;
  - 2. When an early intervention service provider refuses to initiate or change the identification, assessment, or provision of services to the child or refuses to make any changes requested by the parent(s) in the provision of early intervention services; or
  - 3. When an early intervention service provider refuses to amend the child's records or proposes to destroy unneeded records in accordance with the confidentiality requirements of this rule.
- (b) Content of Notice:
  - 1. The notice shall be in sufficient detail to:
    - (i) Explain all the procedural safeguards available to the parent(s);
    - (ii) Describe the proposed (or refused) action, explain the reasons for the action, and describe any options that were considered and why they were rejected;
    - (iii) Describe, when applicable, each assessment procedure, type of test, record, or report used as a basis for the action;
    - (iv) Include a description of any other factors relevant to the action;
    - (v) Be written in language understandable to the general public; and
  - (I) Be provided in the native language of the parent or the mode of communication used by the parents, unless it is clearly not feasible to do so;

(Rule 0520-1-10-.03, continued)

- (II) Be communicated orally (when necessary) in the native language or other mode of communication used by the parent(s), so that the parent(s) understands the content of the notice; and
    - (III) Provide sources for parent(s) to contact to obtain assistance in understanding the above provisions.
  - 2. Steps to be utilized to ensure that parent(s) of an eligible child are present at each meeting of the IFSP Team shall include:
    - (i) Timely communication and planning with the parents in initiating meeting scheduling;
    - (ii) Scheduling the meeting at a mutually agreed upon time and place;
    - (iii) Stating in the written notice provided to parent(s):
      - (I) The purpose, time, and location of the meeting;
      - (II) Scheduling the meeting at a mutually agreed upon time and place; and
      - (III) That the parent(s) may bring other persons to the meeting if they choose to do so.
      - (IV) If the purpose of the meeting is the consideration of transition services at age three (3), the notice must also:
        - I. Indicate this purpose; and
        - II. Identify any other agency(s) that will be invited to send a representative.
- (3) Parental Consent.
  - (a) Written informed consent shall be obtained before:
    - 1. Conducting the initial evaluation and assessment of a child;
    - 2. Conducting the family assessment;
    - 3. Initiating the provision of early intervention services; and
    - 4. Accessing third party payment for early intervention services;
    - 5. Disclosing personally identifiable information to unauthorized persons, except for directory information where reasonable notice of disclosure is provided and the parent has not objected.
  - (b) If written consent is not given, reasonable efforts shall be made to ensure that the parent(s):
    - 1. Is fully aware of the nature of the evaluation and assessment or the services that will be available;

(Rule 0520-1-10-.03, continued)

2. Understands that the child will not be able to receive the evaluation and assessment unless written consent is given;
3. Understands that the child can not receive the recommended early intervention services unless written consent is given; and
4. Understands that their refusal to consent to an initial evaluation may result in a request by the appropriate state agency for a due process hearing.

(c) In addition, all requirements regarding personally identifiable information in the federal regulations shall be met.

(4) Parent(s) Right to Decline Service.

The parent(s) of a child eligible under 0520-1-10 may determine whether they, their child, or other family members will accept or decline any early intervention service under 0520-1-10 in accordance with State law. The parents may decline such a service after first accepting it without jeopardizing other early intervention services under 0520-1-10.

(5) Review of Records.

(a) The parents of an eligible child shall be given the opportunity to inspect and review early intervention records without unnecessary delay (in no case more than ten (10) days after the request is made) relating to:

1. Evaluations and assessments;
2. Eligibility determination;
3. Development and implementation of IFSPs;
4. Individual complaints related to the early intervention system dealing with the child; and
5. Any other area involving early intervention records about the child and the child's family.

(b) In addition, all requirements requiring access to any child record is governed by applicable federal and state law.

(c) The right to review a record includes:

1. The right to a response to reasonable requests for explanations and interpretations of the record;
2. The right to obtain, free of charge, one (1) copy of the record; and
3. The right to have a representative, of the parent's choosing (authorized in writing), review the record.

(d) TEIS, and other public and private providers of early intervention services, shall, upon request, inform parents of the types and locations of records collected, maintained, or used by public agencies and private providers relating to:

(Rule 0520-1-10-.03, continued)

1. Screening, evaluation, assessment, eligibility determination, or the development and implementation of the IFSP;
  2. Individual complaints dealing with the child or family; and
  3. Any other area under 0520-1-10 involving records about the child and family.
- (e) TEIS and other public and private providers of early intervention services shall presume that the parent has authority to inspect and review records relating to his or her child unless the provider entity has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce, and a copy of the applicable document has been provided to the provider entity.
1. If any early intervention record includes information on more than one child, the parent of an eligible child or child suspected of being eligible shall have the right to inspect and review only the information relating to the child or to be informed of that specific information.
- (f) A parent who believes that information in the early intervention records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request that TEIS or other early intervention provider amend the information.
1. TEIS, or the early intervention service provider agency, upon receiving a request from a parent shall decide, within a reasonable time of its receipt of the request, but in no event more than forty-five (45) days, whether to amend the information as requested. If the participating agency decides to refuse to amend the information, it shall inform the parent of the refusal and advise the parent of the right to a hearing.
  2. TEIS, or the early intervention provider agency shall, on request, provide an opportunity for a hearing to challenge information in early intervention records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.
  3. If, as a result of the hearing, TEIS or the provider agency determines that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and provide written notice to the parents.
  4. If, as a result of the hearing, TEIS or the early intervention provider agency determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parents of the right to place in the records an explanation commenting on the information or setting forth any reasons for disagreeing with the decision.
  5. Any explanation placed in the record of the child must be maintained by the participating agency as part of the record of the child as long as the record or contested portion is maintained. If the record of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.
- (g) Written parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in this part.

(Rule 0520-1-10-.03, continued)

1. The Lead Agency, TEIS, and other public and private early intervention services providers shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. The participating agency shall designate one person to assume responsibility for ensuring the confidentiality of any personally identifiable information.
  2. Any person collecting or using personally identifiable information shall receive training or instruction regarding these procedural safeguards and FERPA. Early intervention agencies or providers must maintain, for public inspection, a current listing of the names and positions of employees who may have access to personally identifiable information.
  3. Early intervention agencies or programs must keep a record of persons (other than parents or authorized employees) obtaining access to the child's records, including name, date, and their purpose for access.
- (h) TEIS and other public and private early intervention providers shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide services to the child and shall have such information destroyed at the request of the parents.
- (i) Information contained in the IFSP or individual assessments and individual evaluations shall not be available to the public but must be available to all professionals serving the child and/or family. All confidentiality requirements apply.
- (j) The provisions of this section expressly extend to any records or other information collected or maintained by any agency, organization, or person in connection with an individual evaluation.

## 0520-1-10-.04 RESOLUTION OF INDIVIDUAL CHILD COMPLAINTS.

- (1) The Lead Agency and the Division of Special Education shall provide for impartial resolution of individual child complaints by parents.
- (a) A parent may file a written complaint when an early intervention agency or service provider proposes or refuses to initiate or change the:
1. Identification, evaluation, eligibility determination or assessment of an eligible child;
  2. Development of an individualized family service plan;
  3. Provision of appropriate early intervention services to the child or the child's family; or
  4. Use of third (3<sup>rd</sup>) party payment for early intervention services.
- (b) A written complaint shall:
1. Be signed by the parent(s) or surrogate parent(s);
  2. Contain a written description of the complaint; and
  3. Be filed with the Lead Agency through the TEIS District Office.

(Rule 0520-1-10-.04, continued)

- (c) The Lead Agency shall confirm receipt of the complaint in writing with the parent and all other parties involved in the complaint.
- (d) Within sixty (60) calendar days after a complaint is filed, the Lead Agency must:
  - 1. Carry out an independent on-site investigation, if it is determined that such an investigation is necessary;
  - 2. Insure that involved parties will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
  - 3. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of the law;
  - 4. Issue a written decision that addresses each allegation and contains the following:
    - (i) Findings of fact and conclusions; and
    - (ii) The reasons for the final decision; and
  - 5. Provide procedures for effective implementation of the final decision and, if needed, assist with technical assistance activities, negotiations, and corrective actions needed to achieve compliance.

(2) Mediation.

Parent(s) and early intervention providers may participate in mediation to resolve disputes regarding the provision of appropriate early intervention services to an eligible child or a child suspected of being eligible. Mediation shall be voluntary and must be mutually agreed upon by the parent(s) and early intervention service providers.

- (a) Mediation may be requested by parents or an early intervention service provider when:
  - 1. A conflict regarding early intervention services of an eligible child or a child suspected of being eligible cannot be resolved without third (3<sup>rd</sup>) party assistance; or
  - 2. Either involved party is requesting a due process hearing.
- (b) When the parents and early intervention service provider agree to mediate a conflict, a "Request for Mediation" form shall be completed and signed by both parties and sent to the TEIS district office to be forwarded to the Lead Agency.
- (c) The mediation session(s) shall occur at a mutually agreed upon time and date but may not delay or deny either party's rights to a due process hearing or obviate the need for adherence to the prescribed timelines if a due process hearing has been requested.
- (d) Qualified and impartial third (3<sup>rd</sup>) party mediators assigned by the Division of Special Education shall conduct mediation sessions. All mediators shall receive training in the following areas:
  - 1. State and federal early intervention laws and regulations;

(Rule 0520-1-10-.04, continued)

2. Procedures for conducting mediation sessions in an orderly and controlled manner;
  3. Group process skills essential to achieving consensus agreement;
  4. Phases of mediation;
  5. Procedures for writing a consensus agreement; and
  6. Procedures for debriefing the parties;
- (e) Mediators shall not be assigned to cases under the following conditions:
1. The mediator is employed by other organizations or agencies involved in the provision of early intervention services to the child and/or family whose program is in dispute; or
  2. If that person has a personal or professional interest that would conflict with his/her objectivity.
- (f) Records, notes or summaries of mediation proceedings may not be entered into evidence in a due process hearing. A mediator may not be subpoenaed as a witness in a due process hearing for a child for whom he/she was the mediator.
- (g) The Division of Special Education shall be responsible for providing appropriate meeting space and shall bear the administrative costs of arrangements for the mediation with the exception of the services of the mediator.
- (h) If a parent is not satisfied with the findings and decision of the mediation procedure, the parent may request in writing a due process hearing by:
1. Filing a written request with the Lead Agency through the TEIS District Office; and
  2. Following the due process procedure outlined in federal regulations.
- (3) Due Process.
- Parents have the right to an impartial due process hearing in order to settle disputes regarding the provision of appropriate early intervention services to an eligible child or a child alleged to be eligible.
- (a) A request for a hearing by a parent shall be made in writing, giving a brief statement of facts supporting the grounds to the Lead Agency through the TEIS District Office, if the child has been or is about to be:
1. Denied identification, evaluation, entry, or continuance in appropriate services;
  2. Provided early intervention services which are inappropriate to his conditions and needs;
  3. Denied his rights by having data collected, maintained or used which the parent believes to be inaccurate, misleading or otherwise in violation of the privacy rights of the child;

(Rule 0520-1-10-.04, continued)

4. Improperly identified as eligible for early intervention services.
- (b) When the parent requests a hearing, the TEIS District Office shall contact the parent for the purpose of establishing the following:
    1. Suitable time (morning, afternoon, or evening);
    2. Two (2) possible dates for the hearing to be held; and
    3. Whether the hearing will be closed or open.
  - (c) The TEIS District Office, upon receiving the request for a hearing, shall inform the parents of low-cost or free legal and other relevant services available to them and shall document the information given.
  - (d) In the event that a parent refuses to consent to an initial evaluation, a request for a hearing can be made in writing to the Division of Special Education, giving a brief statement of facts supporting the grounds for the hearing.
  - (e) The hearing shall occur no less than fifteen (15) days and no more than thirty (30) days from the receipt of a request for a hearing from the parent. A final decision must be reached in the hearing no later than forty-five (45) days after the receipt of a request for a hearing unless an extension is requested by either party and approved by the hearing officer.
    1. Extensions may not result in a decision later than ninety (90) days from receipt of the request for the hearing.
  - (f) An impartial hearing officer assigned by the Division of Special Education shall conduct the hearing. All hearing officers shall be trained in the following areas:
    1. State and federal special education and early intervention laws and regulations;
    2. The Uniform Administrative Procedures Act;
    3. Clear writing and proper grammatical form;
    4. Conducting hearings in an orderly and controlled manner;
    5. Rendering decisions in an impartial manner, extracting pertinent data from a variety of sources, and arriving at an appropriate decision;
    6. The nature of developmental delays in infants and toddlers and early intervention programming;
    7. Evaluation and assessment instruments and procedures; and
    8. A professional demeanor and objectivity.
  - (g) No hearing officer shall be an officer or employee of an early intervention program.
  - (h) No hearing officer shall have a personal or professional interest that would conflict with his or her objectivity.

(Rule 0520-1-10-.04, continued)

- (i) The TEIS District Office shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer. Expenses for the services of a court reporter, the original copy of the transcript and one (1) copy for the parent will be reimbursed on submissions of appropriate documentation to the Division of Special Education. Court reporter fees will not, however, be reimbursed when transcripts are not released within ten (10) days after the date of the hearing, except in extraordinary circumstances, as determined by the hearing officer.
- (j) During the pendency of any proceeding involving an individual child complaint, unless the early intervention provider involved in the disputed service and the parents agree otherwise, the child must continue to receive the early intervention services listed in the IFSP.
  - 1. If the complaint involves initial eligibility for early intervention services, the child, with the consent of the parents, must be provided early intervention services until the completion of all the proceedings.
- (k) Any party to a due process hearing has the right to:
  - 1. Be accompanied and advised and/or represented by counsel and by individuals with special knowledge or training with respect to the problems of eligible children;
  - 2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - 3. Receive a written decision including findings of fact and conclusions of law, based upon evidence presented at the hearing;
  - 4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing.
- (l) Requests for the attendance of witnesses shall be made to the Lead Agency who shall inform the hearing officer of the request. Subpoenas to compel the attendance of witnesses and the production of documentary evidence shall be issued by the hearing officer. The Lead Agency shall ensure the availability of appropriate employees called as witnesses.
- (m) The Lead Agency shall provide a typed transcript of the proceedings to the following:
  - 1. The parent; and
  - 2. The hearing officer (original copy).
- (n) A final decision will be reached in the hearing and a copy of the decision will be mailed to the following:
  - 1. The parent(s);
  - 2. The appropriate early intervention service providers; and
  - 3. The Division of Special Education.

(Rule 0520-1-10-.04, continued)

- (o) Unless a decision is rendered within forty-five (45) days after the receipt of a request for hearing, the hearing officer will not be reimbursed, except in extraordinary circumstances as determined by the Commissioner or a continuance is granted by the hearing officer. In addition, if no decision has been rendered within forty-five (45) days after the receipt of a request for hearing, the party requesting the hearing may request that:
  - 1. A different hearing officer be appointed to review the existing transcript and evidence and render a decision on the record.
- (p) A decision by a hearing officer, as a result of a hearing, is final unless a party appeals the decision to state court in accordance with TCA § 4-5-322 and 49-10-601. Nothing in this section, however, shall prevent either party from bringing an action in the federal district court of jurisdiction, as otherwise authorized by law. No party can file petitions for reconsideration to the hearing officer.
- (q) The Lead Agency shall, after removing personally identifiable information, transmit to the ICC the decision and make the due process hearing decisions available to the public, in a manner consistent with State and Federal confidentiality requirements.
- (r) Any party aggrieved by the findings and decision regarding an individual child complaint has the right to bring a civil action in State or Federal court.

0520-1-10-.05 STATE ADMINISTRATION.

- (1) The Department is designated by the Governor as Lead Agency for TEIS and is responsible for the administration of the State's early intervention system.
- (2) The Department, in accordance with IDEA Part C and state interagency agreements, shall be responsible for:
  - (a) The general administration and supervision of programs that receive funding under IDEA Part C to provide services to eligible infants and toddlers and their families and
  - (b) Assigning financial responsibility among appropriate agencies for early intervention services.
- (3) The Department, shall be responsible for the supervision and monitoring of programs including:
  - (a) Supervising and monitoring programs and activities that comprise the early intervention system, including agencies, institutions, and organizations which provide early intervention services to children eligible under IDEA Part C and their families, for compliance with IDEA Part C and the provisions of federal and state regulations, policies and procedures, whether or not the programs or activities receive financial assistance under IDEA Part C;
  - (b) Providing, or facilitating the provision of, technical assistance to those agencies, institutions, and organizations including self-evaluation, program planning and implementation;
  - (c) Enforcing obligations imposed on those agencies, institutions and organizations as required under these regulations; and
  - (d) Directing that deficiencies identified through monitoring be corrected.

(Rule 0520-1-10-.05, continued)

- (4) Each agency receiving assistance under IDEA Part C shall:
  - (a) Submit financial and other written reports at the time and manner specified by TEIS; and
  - (b) Participate in periodic on-site monitoring visits conducted by TEIS.
- (5) Department Procedures for Receiving and Resolving Early Intervention Administrative Complaints shall include:
  - (a) Receiving and resolving any early intervention administrative complaint that one or more requirements are not met; and
  - (b) Conducting an independent on-site investigation of an early intervention system complaint if determined necessary.
    - 1. The early intervention system complaint may concern violations by:
      - (i) Any public agency in the State that receives funding under IDEA Part C;
      - (ii) Other public agencies that are identified as being part of the State's early intervention system; or
      - (iii) Private service providers under public supervision.
    - 2. An individual or organization may file a written, signed early intervention system complaint with the Lead Agency. The complaint shall include:
      - (i) A statement that the State has violated a requirement of IDEA Part C of the Individuals with Disabilities Education Act (IDEA); and
      - (ii) The facts on which the early intervention system complaint is based.
    - 3. Within sixty (60) days of the receipt of an early intervention complaint, the Lead Agency shall:
      - (i) Carry out an independent on-site investigation, if determined necessary by the Lead Agency;
      - (ii) Provide opportunity for the complainant to submit additional information, either orally or in writing, about the allegations in the complaint;
      - (iii) Resolve the early intervention system complaint; and
      - (iv) Issue a written report of the findings, recommendations, the reason for the decision, and required actions to the individual or organization filing the complaint and all other parties involved in the complaint.
  - (c) An extension of the time limit shall be granted only if the Lead Agency determines that exceptional circumstances exist with respect to a particular early intervention system complaint.

(Rule 0520-1-10-.05, continued)

- (d) Information regarding procedures for filing a complaint will be included in the Rights of Infants and Toddlers document published by the Lead Agency and will be made available to parents and other interested individuals.
- (e) The Lead Agency shall, after removal of all personally identifiable information, transmit to the State Interagency Coordinating Council the decisions regarding early intervention system complaints, and also make decisions available to the public, in a manner consistent with state and federal confidentiality requirements.
- (6) The Department shall utilize funds provided under IDEA Part C that are reasonable and necessary for administering the State early intervention system.
- (7) TEIS shall ensure that traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all components of the early intervention system and that these families have access to culturally competent services within their local geographical areas.
- (8) The lead agency shall utilize contractual arrangements as a method of securing required early intervention services for children and families. Each contractor will be required by the terms of their contract to adhere to all applicable state and federal requirements for the provision of services to IDEA Part C eligible children and their families.
  - (a) All early intervention services provided for eligible children and their families shall meet the definition of early intervention services and shall be provided in a manner that is consistent with state and federal standards for services under IDEA Part C.
  - (b) Procurement of early intervention services by service providers shall conform to the applicable agency procurement policies.
  - (c) Individuals or organizations seeking to provide early intervention services shall meet the requirements and standard established by the Lead Agency.

## 0520-1-10-.06 INTERAGENCY AGREEMENTS.

## (1) General.

The Lead Agency shall enter into and maintain formal interagency agreements with other state-level agencies involved in the State's early intervention system. Each agreement shall:

- (a) Define the financial responsibility of each agency involved;
- (b) Include procedures for a timely resolution of intra-agency and interagency disputes regarding payment or other matters related to the early intervention system, including a mechanism for making a final determination that is binding upon the agencies involved;
- (c) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and
- (d) Include the process to be used in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner;
- (e) Include procedures for timely reimbursement of funds to TEIS for interim payment made for early intervention services in accordance with 34 CFR 303.527(b) to prevent delay in

(Rule 0520-1-10-.06, continued)

the timely provision of services to an eligible infant or toddler or their family, pending reimbursement from the agency or entity that has ultimate responsibility for payment; and

- (f) Include any other components necessary to ensure effective cooperation and coordination among all agencies.
- (2) The Department (TEIS) shall, in accordance with established TEIS procedures, ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

0520-1-10-.07 IDENTIFICATION AND COORDINATION OF RESOURCES.

- (1) General.

The Lead Agency shall maintain control of funds provided to the State under IDEA Part C and title to property acquired with those funds will be in a public agency for the uses and purposes provided in this part, and a public agency will administer the funds and property.

- (2) The Department (TEIS) shall be responsible for:
  - (a) The identification and coordination of all available resources for early intervention services within the State, including those from federal, state, local and private sources. Federal funding sources in this section include:
    - 1. Title V of the Social Security Act (relating to Maternal and Child Health);
    - 2. Title XIX of the Social Security Act (relating to the general Medicaid Program which includes EPSDT) (TennCare);
    - 3. The Head Start Act;
    - 4. Parts B and C of IDEA;
    - 5. Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;
    - 6. The Developmental Disabilities Assistance and Bill of Rights Act (Pub.L 94-103); and
    - 7. Other Federal Programs; and
  - (b) Updating the information on the funding sources if there is a legislative or policy change under any of those sources.
- (3) As payor of last resort, the Department (TEIS) shall not utilize IDEA Part C funds to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of IDEA Part C and Tennessee's election to participation in this system. Therefore, IDEA Part C funds may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other federal, state, local, or private source.
- (4) The Department (TEIS) shall in no way permit IDEA Part C funds to be used to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA)

(Rule 0520-1-10-.07, continued)

(relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State of Tennessee (34 CFR § 303.527(c)).

- (5) Funds provided to the State under IDEA Part C shall only be used to supplement and increase state and local funds for eligible children. They shall not be utilized to supplant existing state and local funds. The total amount of state and local funds budgeted for expenditures in each current fiscal year shall be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and families in the most recent preceding fiscal year for which the information is available. Allowances may be made for:
  - (a) Decreases in the number of infants and toddlers who are eligible to receive services under IDEA Part C; and
  - (b) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.
- (6) The Department (TEIS) shall ensure that an equitable distribution of resources is made available among all geographical areas of the State.

0520-1-10-.08 INTERAGENCY COORDINATING COUNCIL (ICC).

- (1) General.

Tennessee's Early Intervention System (TEIS) shall maintain an Interagency Coordinating Council (ICC) which:

- (a) Is appointed by the Governor in accordance with IDEA Part C;
- (b) Consists of a membership representative of the population of the State; and is composed as follows:
  1. At least twenty (20) percent shall be parents of infants or toddlers with disabilities or of children with disabilities aged twelve (12) or younger with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one (1) such member shall be the parent of an infant or toddler with a disability or a child with a disability aged six (6) or younger,
  2. At least twenty (20) percent of the members shall be public or private providers of early intervention services;
  3. At least one (1) member shall be from the State legislature;
  4. At least one (1) member shall be involved in the preparation of personnel to work with infants and toddlers;
  5. At least one (1) member shall be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies;
  6. At least one (1) member shall be from the state educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency;

(Rule 0520-1-10-.08, continued)

7. At least one (1) member shall be from the agency responsible for the state governance of health insurance;
  8. At least one (1) member shall be from a Head Start Agency or program in the State; and
  9. Others appointed as deemed appropriate and selected by the Governor.
- (2) The Governor shall designate a member of the Council to serve as chairperson or shall require the Council to so designate such a member. No member who is a representative of the Department shall be able to serve as the council chairperson.
- (3) The ICC shall advise and assist the Lead Agency in the development and implementation of the policies that constitute the statewide system including, but not limited to:
  - (a) The provision of appropriate services for children from birth through age five (5).
  - (b) The integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether or not "at-risk" is a recognized eligibility for early intervention services;
  - (c) The identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of interagency agreements;
  - (d) The preparation of applications and the amendments thereto; or
  - (e) The transition of toddlers with disabilities to preschool and other appropriate services.
- (4) The ICC shall prepare and submit an annual report to the Governor and to the Secretary of Education on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State in keeping with the date and format established by the Secretary of Education.
- (5) The ICC shall meet at least quarterly.

Meetings shall be:

  - (a) Announced to the public, no later than ten (10) business days, prior to the scheduled meeting; and
  - (b) To the extent appropriate, open and accessible to the general public.
- (6) The ICC may, subject to approval of the Governor, prepare and approve a budget using funds under IDEA Part C to:
  - (a) Conduct hearings and forums;
  - (b) Reimburse members of the ICC for reasonable and necessary expenses for participating in council meetings and performing council duties;
  - (c) Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;
  - (d) Hire staff, and

(Rule 0520-1-10-.08, continued)

- (e) Obtain the services for such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part; and
  - (f) Provide interpreting services for persons who are deaf and other necessary services, both for Council Members and participants.
  - (g) Except as provided in this section, Council members shall serve without compensation from IDEA Part C funds.
- (7) No member of the ICC shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Tennessee law.

0520-1-10-.09 LOCAL INTERAGENCY COORDINATING COUNCIL (LICC).

(1) General.

Each of the nine (9) geographic districts of TEIS shall maintain a Local Interagency Coordinating Council (LICC). Each LICC shall consist of:

- (a) Fifteen (15) to twenty-five (25) members including families and local service providers who are involved in the provision and/or coordination of early intervention services to IDEA Part C eligible infants and toddlers and their families.
- (2) The membership of the LICC shall include, at a minimum:
- (a) At least twenty (20) percent shall be parents of infants or toddlers with disabilities or children with disabilities aged eight (8) or younger with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one (1) such member shall be the parent of an infant or toddler with a disability or a child with a disability aged three (3) or younger and must include parents of children, including minority parents of infants or toddlers with disabilities;
  - (b) At least twenty (20) percent of members must be public or private providers of early intervention/early childhood services;
  - (c) At least one (1) member shall be from a local Head Start/Early Head Start Program;
  - (d) At least one (1) member shall be from a local childcare program and/or the local Child Care Resource Center;
  - (e) At least one (1) member shall be representing the local health care system;
  - (f) At least one (1) member shall be from a local education agency (LEA); and
  - (g) Others, as deemed appropriate by the Council to address the unique needs and concerns of that TEIS district.
- (3) An updated membership roster, including identification of the individual designated as chairperson by the Council for the upcoming year, shall be submitted to the State lead agency no later than July 1<sup>st</sup> of each fiscal year.
- (4) The LICC shall meet at least quarterly and in such places as it deems appropriate and shall be;
- (a) Announced to the public no later than ten (10) working days prior to the meeting;

(Rule 0520-1-10-.09, continued)

- (b) Open and accessible to the general public; and
  - (c) Minutes and attendance shall be maintained for each meeting.
- (5) The functions of the Local Interagency Coordinating Council shall include:
  - (a) Facilitating collaboration among the local TEIS District Office and other entities involved in the early intervention system at the local level;
  - (b) Promoting and implementing interagency public awareness activities at the local and regional level in accordance with the plan for effective outreach developed by the lead agency for the early intervention system;
  - (c) Advising and assisting in the coordination of regional and local early intervention initiatives to ensure effective implementation of the early intervention system;
  - (d) Providing information to the SICC regarding local issues relating to the timely delivery of services;
  - (e) Developing local collaborative agreements to ensure timely referrals of infants and toddlers known to be or suspected of experiencing developmental delays and effective transition to appropriate services upon exiting the early intervention system at age three;
  - (f) Participating in the community network phase of the TEIS monitoring including:
    - 1. Providing information to the monitoring team; and
    - 2. Receiving and preparing a plan of corrective actions for any findings resulting from the monitoring visit.

0520-1-10-.10 DATA COLLECTION.

- (1) The Department shall maintain a system for collecting, managing, analyzing, and reporting statewide data regarding the current operational status of the various components of Tennessee's Early Intervention System. Specific aspects of the early intervention system for which data is currently compiled and utilized includes, but is not limited to:
  - (a) The number of referrals received by the system and the referral sources;
  - (b) The unduplicated number of eligible children served by the system;
  - (c) Local Child Find efforts;
  - (d) The types and quantity of early intervention system;
  - (e) The availability and qualifications of service providers available in the State;
  - (f) The locations and settings in which services are provided;
  - (g) Information regarding the numbers of children who transition to IDEA Part B preschool services at age three (3); and
  - (h) Training needs of service providers and the provision of training by the early intervention system.

(Rule 0520-1-10-.10, continued)

Authority: TCA § 49-1-302, 49-10-601, 49-10-702.

6/28/01